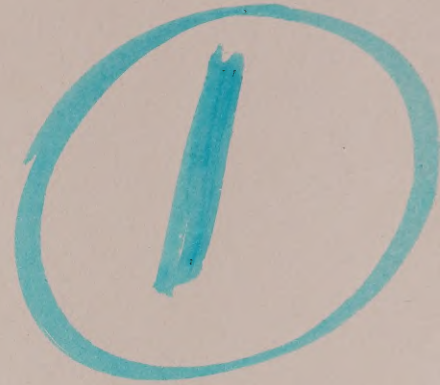


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ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND
RELATED MATTERS.

Hearing held in Court Room 20
Court House
361 University Avenue
Toronto, Ontario

The Honourable Mr. Justice S.A.M. Grange	Commissioner
P.S.A. Lamek, Q.C.	Counsel
E.A. Cronk	Associate Counsel
Thomas Millar	Administrator

Transcript of evidence
for

June 21, 1983

VOLUME 1

OFFICIAL COURT REPORTERS

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14 Carlton Street, 7th Floor,
Toronto, Ontario M5B 1J2

595-1065

equations of static Equilibrium:

$$\sum F_x = 0$$

$$\sum F_y = 0$$

$$\sum T = 0$$

$$\sum T = (F_m)(d_m) - (F_{ax})(d_{ax})$$

$$0 = (20N)(0.03m) - (\cancel{20N})(\cancel{0.03m})$$

equations of Dynamic Equilibrium:

$$\sum F_x - \bar{m}a_x = 0$$

$$\sum F_y - \bar{m}a_y = 0$$

$$\sum T_G - I\alpha = 0$$

\bar{I} = moment of inertia

α = angular acceleration

$\sum T_G$ = Sum of Torques
of Center of Mass

"Relationship between linear and angular velocity"

$$v = r\omega$$

v = linear velocity
(m/s)

r = radius of
Rotation

ω = angular velocity
(rad/s)

R



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83H021

ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN
AND RELATED MATTERS.

Hearing^s held in Court Room 20,
Court House, 361 University
Avenue, Toronto, Ontario, on
Tuesday, the 21st day of June,
1983.

- - - -

THE HONOURABLE MR. JUSTICE S.A.M. GRANGE - Commissioner
THOMAS MILLAR - Administrator

- - - -

APPEARANCES:

P.S.A. LAMEK, Q.C.)
E.A. CRONK)

Commission Counsel

T.C. MARSHALL, Q.C.)
D. HUNT)

Counsel for the Attorney-
General and Solicitor
General of Ontario
(Crown Attorneys and
Coroner's Office)

I.G. SCOTT, Q.C.)
I.J. ROLAND)

Counsel for The Hospital
for Sick Children

D. YOUNG

Counsel for The Metropolitan
Toronto Police

W.N. ORTVED)
K. CHOWN)

Counsel for numerous Doctors
at The Hospital for Sick
Children

B. SYMES)
E. MCINTYRE)

Counsel for the Registered
Nurses' Association of
Ontario and 35 Registered
Nurses at The Hospital for
Sick Children

Relationship between Impulse & momentum

~~$$I = F \cdot t$$~~

$$I = F \cdot t$$

$$F = ma$$

$$= \text{Force} \cdot \text{time (sec)}$$
$$(N)$$

$$F = m \frac{(v_2 - v_1)}{\Delta t}$$

$$\Delta t \cdot F = m v_2 - m v_1$$

$$I = N \cdot \text{sec}$$

$$F \cdot t = \Delta p$$

Momentum

$$M = mv$$

$$M = \text{Momentum (kg} \cdot \text{m/s)}$$

$$m = \text{mass (kg)}$$

$$v = \text{linear velocity (m/s)}$$

- linear Kinetics of Human Movement (Chp 12)
- linear Kinematics in Human Movement (Chp 10)
- Angular Kinetics in Human Movement (Chp 14)
- Angular Kinematics in Human Movement (Chp 11)



APPEARANCES: (Continued)

J. SOPINKA, Q.C.	Counsel for Susan Nelles - Nurse
G.R. STRATHY) E.J. FORSTER)	Counsel for Phyllis Trayner - Nurse
C. BUHR	Counsel for Sui Scott - Nurse
J.A. OLAH	Counsel for Janet Brownless (Vereecken) R.N.A.
<i>Nancy Goodman</i> B. JACKMAN	Counsel for Mrs. Christie - R.N.A.
M. COHEN	Counsel for Registered Nursing Assistants and Ward Clerks at The Hospital for Sick Children
M. MANNING, Q.C.	Counsel for Mr. and Mrs. Gosselin, Gionas, Inwood, Turner and Lutes (parents of deceased children)
F.J. SHANAHAN	Counsel for Mr. and Mrs. Dominic Lombardo (parents of deceased child Stephanie Lombardo)
W.T. TOBIAS	Counsel for Mr. and Mrs. Hines (parents of deceased child Jordan Hines)



1
2 ---Upon commencing at 2:00 p.m.

3 THE COMMISSIONER: Yes, Mr. Lamek?

4 MR. LAMEK: Mr. Commissioner, there
5 are a couple of matters on the question of standing.

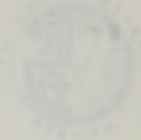
6 At the May 31st hearing you accorded
7 standing, sir, to two groups comprising ^{highly} nurses and
8 secondly RNAs and ward clerks. A member of the
9 Registered Nurses Group, Mrs. Sui Scott is now
10 separately represented, and I take it there is no
11 question but that she individually should have
12 standing in this Commission?

13 THE COMMISSIONER: No. No problem
14 about that.

15 MR. LAMEK: Mr. Commissioner,
16 there are two RNAs, Registered Nursing Assistants,
17 who are now separately represented: Mrs. Christie,
18 by the Knazan Jackman firm, and Mrs. Janet Vereecken,
19 formerly Janet Brownless, by the Beard Winter firm,
20 and similarly I take it those two Registered
21 Nursing Assistants may have standing in their own
22 right?

23 THE COMMISSIONER: Yes. No problem.

24 MR. LAMEK: Mr. Commissioner,
25 the group of Registered Nursing Assistants and ward
clerks who were formerly represented by the Knazan



---upon commencing at 3:00 p.m.

THE COMMISSIONER: Yes, Mr. Lamer.

MR. LAMER: Mr. Commissioner, there

are a number of matters on the question of standing.

At the last hearing you suggested

standing, that is two groups consisting of

separately, and also a group of the

registered nurses group, Mr. Scott is now

separately represented, and I take it there is no

question but that the individuals should have

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MR. LAMER: Mr. Commissioner,

there are two groups, registered nursing assistants,

who are now separately represented; Mrs. Christie,

of the Kansas Nurses Association, and Mrs. Janet Verbeke,

formerly Janet Verbeke, by the Board of Nurses,

and similarly I think it shows two registered

nursing assistants may have standing in their own

right.

THE COMMISSIONER: Yes, no problem.

MR. LAMER: Mr. Commissioner,

the group of registered nursing assistants and ward

clerks who were formerly represented by the Kansas



1
2 Jackman firm is now represented by Miss Marion Cohen,
3 and I am not aware of any other applications for
4 standing, but if there is anyone else perhaps the
5 application could be made now?

6 You seem to have a full hand,
7 Mr. Chairman.

8 Mr. Commissioner, in the three weeks
9 since the first organizational sitting of the
10 Commission, the Commission staff and Miss Cronk and
11 I have been extremely busy, and I think it appro-
12 priate at the outset of these public hearings that
13 I acknowledge and express my thanks for the great
14 co-operation that I received from the staff of the
15 Commission and from other counsel, and it is only
16 because of that co-operation that it has been
17 possible for Miss Cronk and me to meet your very
18 clear wish that we get underway with these hearings
19 before the end of June.

20 Anyone who has ever had anything to
21 do with a Royal Commission will recognize that you
22 have probably, sir, set a record here. The Order in
23 Council appointing you is dated April 21st, 1983,
24 and in two short months, and I can attest with
25 feeling that they have been short months, the whole
organizational structure of this Commission has been



1
2 set up, scores of administrative matters, of a more
3 or less minor nature but nonetheless time consuming,
4 have been dealt with, and a number of difficult
5 questions have been considered, sir, such as the
6 funding of legal representation for several parties,
7 and decisions as to the handling and release of
8 certain sensitive material.

9 All of those matters had to be
10 addressed and all of them in the context of a mandate
11 from the government to give a public, thorough
12 public airing, to matters which have troubled
13 citizens of Ontario for over two years: matters
14 which have certainly caused considerable anguish
15 to the parents whose children died in the Hospital
16 Cardiac Wards in the period under review and who
17 want to know, indeed are entitled to know, if anybody
18 can tell them, what happened to their children.

19 You have properly perceived, if I
20 may say so, Mr. Commissioner, that there should be
21 no delay in starting upon these public hearings
22 and so it is that two months to the day after your
23 appointment we are here making a start.

24 When I say that the past few weeks
25 have been very busy, I do so not as seeking any
praise or as recording any virtue: I say it rather



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2 by way of explanation and apology that I have not
3 always been able to respond to the questions of
4 counsel and others as quickly as either they or
5 I would have liked. And I know that other counsel,
6 particularly those who have not previously had
7 anything to do with the subject matter of this
8 Inquiry, have been properly and understandably
9 anxious to get on with their preparations for these
10 hearings. If I have held them up to any extent,
11 I apologize. I assure them that I did it not will-
12 ingly, and I thank them for their patience,
Mr. Commissioner.

13 During the past three weeks we, and
14 I say bluntly the prime credit here must go to
15 Miss Cronk, we prepared a statement of prima facie
16 facts which has been distributed to counsel and
17 about which I want to say more later. But I do
18 at the outset also wish to acknowledge the
19 tremendous co-operation that we received from
20 everybody whom we have approached with the request
21 that they come here either as witness or as
consultant to the Commission.

22 Frankly, this is a terrible time of
23 year to try to get people on short notice to
24 re-arrange plans, shuffle moveable dates and that
25



1
2 sort of thing. The co-operation has been outstanding.
3 They have not always been able to meet our exact
4 timetable. They have done their best, and I think
5 that will appear as the evidence unfolds,
6 Mr. Commissioner.

7 Now I referred a moment ago to the
8 statement of prima facie facts.

9 That statement has been furnished to
10 counsel, and if the statement becomes an exhibit
11 today (as I shall ask that it do) copies will be
12 available for the public and the news media at the
13 end of today's hearing. But I want to be sure that
14 those who have not yet seen the document understand
15 just what it is that we have tried to do.

16 Mr. Commissioner, the Order in Council
17 appointing you required you to consider the report
18 of the Hospital for Sick Children Review Committee
19 (called the Dubin Report), the so-called Atlanta
20 Report, and the evidence taken at the preliminary
21 inquiry in the prosecution of Susan Nelles, and to
22 take from those sources whatever evidence you
23 consider relevant and appropriate with a view to
24 avoiding the unnecessary duplication of evidence
25 and the unnecessary subjecting of people to
repetitive questioning and answers.



1
2 Now in obedience to that directive
3 we have thought it appropriate to set out in a
4 written statement the facts which are not thought
5 to be in dispute and which, although of interest
6 to the Commission are not prima facie matters about
7 which further evidence need be called. But I do
8 want to be clear, Mr. Commissioner: in drawing
9 the information from the sources mentioned in the
10 Order in Council we have relied on the sources
11 mentioned for the accuracy and completeness of the
12 information.

13 We hope that we have not misstated
14 or otherwise done violence to any of those sources,
15 and if there be misstatement I assure you, sir,
16 that it is not intentional.

17 Where we have observed inconsistencies
18 or contradictions, either within one source or
19 between sources, we have flagged the inconsistency
20 and undertaken to lead evidence in respect of it.
21 But we have relied on the sources, Mr. Commissioner.

22 If the sources are demonstrated to
23 be unreliable in certain respects, as for example,
24 in their incompletely stating propositions or
25 information, that same defect, if defect it be, will
appear in the statement.



1
2 I can only say to have checked each
3 piece of information independently and from sources
4 not available to counsel would have defeated the
5 whole purpose of the exercise.

6 Now it may be that the whole idea of
7 having a statement of prima facie facts was a bad
8 one. I believe it to have been a good one, but it
9 is important, I suggest, to recognize the nature of
10 what we have produced. It is important, too, to
11 appreciate its intended effect.

12 It is not intended to be a statement
13 of agreed fact. And may I read from the introductory
14 section of the statement at page 5 in which it is
15 said:

16 "In the absence of substantial and
17 reasonable objection to his doing so,
18 the Commissioner proposes to treat
19 the facts contained in this statement
20 as having been already sufficiently
21 proved and, save where the contrary
22 is indicated, Commission Counsel will
23 not adduce evidence in respect of
24 them.

25 This should not be taken to mean that
the facts in this statement are



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"immutably carved in stone; if any
interested person at any stage of
the Commission's proceedings should
persuade the Commissioner that any of
these facts is open to dispute,
evidence will be adduced in the usual
way in respect of such fact or facts.
As indicated by the Commissioner on
May 31, 1983, this Statement may
require amendment from time to time."

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In short, Mr. Commissioner, no one is bound by anything in the statement. A failure at the outset to object to any of the contents of this statement is not going to operate as any sort of estoppel; objection or dispute or suggestions for amendments or expansion of the statement can be made at any stage of the hearings of this Commission. It is no more than its title suggests, a statement of prima facie facts prepared simply in the hope that the evidence to be adduced before the Commission may not be unnecessarily protracted. It will no doubt be revised and amended from time to time; in all likelihood it will be expanded from time to time.

Mr. Commissioner, a basic consideration in compiling this statement has been to avoid, wherever possible, the inclusion of any information which was clearly contentious or which was drawn from a source that could not readily be checked by counsel, and it was therefore decided that notwithstanding the reference in paragraph numbered 1 in the Order-in-Council to the Atlanta Report, that Report was not an appropriate source of information for inclusion in this statement at this time because it would not be available to counsel generally



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until a later stage in the Commission's proceedings.

Now, we have departed from that decision in one respect, Mr. Commissioner. We considered that it might be useful to include in the statement summaries of the medical histories and physical condition of the children whose deaths are to be investigated, and recognizing that a summary of a medical record is something about which reasonable doctors may reasonably disagree, nevertheless we thought it perhaps useful at the outset to have some summary, some statement of those conditions.

Some of the summaries were contained in an appendix to the Atlanta Report and we decided therefore to include in the statement that appendix, but we deleted any opinions as to the cause of death or anything else that might be contentious and that therefore should be led in evidence in the usual way.

Mr. Commissioner, the summaries of the medical records in my submission are there only as a temporary expedient. The full records will be before the Commission. There will be considerable medical evidence as to the salient facts to be drawn from each of the medical records and those documents and that evidence will clearly supersede



B.3 1

2 anything that has been said by way of summary in the
3 Statement of Prima Facie Facts.

4 We've also included other medical
5 history summaries from the Hospital records them-
6 selves and from the case summaries prepared by
7 Dr. A. R. Hastreiter, who is a Pediatric
8 Cardiologist retained by the Metropolitan Toronto
9 Police investigative team and who will be called
as a witness before the Commission.

10 Now, I recognize of course that
11 readers of the statement cannot at this point
12 satisfy themselves as to the accuracy or adequacy
13 of the case histories unless they have access to
14 the actual medical records. I have not felt free
15 to this point to make the medical records available
16 to counsel generally, although I have made available
17 to counsel who are representing parents the medical
records of the children of those parents.

18 Mr. Commissioner, it is my intention
19 to file the actual records as exhibits at an early
20 point in these hearings and, at that time of course
21 they will be fully available to counsel to whom
indeed I propose to provide copies.

22 Mr. Commissioner, when I come to the
23 end of this opening statement, I shall ask that the
24
25



B.4

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2 Statement of Prima Facie Facts be marked as the
3 next exhibit.

4 Now, I understand that some counsel
5 understandably have objections of greater or lesser
6 vehemence to some of the contents of this Statement.
7 I suggest that any objections to, or submissions
8 about this Statement or any of its contents that
9 counsel are prepared to make at this time be made
when it is tendered as an exhibit.

10 Now, perhaps for the benefit of those
11 who have not yet seen and, indeed, members of the
12 public, those who may not see the Statement, may I
13 briefly summarize its contents so that they may
14 understand the form and the thrust of it.

15 After a brief introductory section,
16 the Statement, drawing heavily on the Dubin Report,
17 sets out certain information about the Hospital
18 for Sick Children, its organizational and admini-
19 strative structure, the structure of the medical
20 staff, the organization of clinical services, the
21 organization of the Nursing Department and other
22 such general matters. The Statement then deals with
23 the Hospital's Cardiology Division, which of course
24 is one of the points of focus of this Inquiry, the
25 Division as it existed in the period that is here -



B.5

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2 under review, and it covers such matters as the
3 physical layout of Wards 4A and 4B.

4 In a general way, it covers the
5 assignments of staff to and on Wards 4A and 4B,
6 including doctors and nurses. It refers to the
7 emergency procedures that were followed when a
8 cardiac arrest occurred.

9 The Statement then goes on to deal
10 with the increased mortality that apparently
11 occurred on Wards 4A and 4B between July of 1980
12 and March of 1981, and it refers to and identifies
13 those 28 children whose deaths were considered by
14 the Police and their investigative team to be
15 suspicious.

16 Mr. Commissioner, the identification
17 of those 28 children should by no means be taken as
18 any indication of adoption by myself or any of the
19 staff of this Commission of that ^{as} of the appropriate
20 number, but that is the number that has been in the
21 public arena to this point and they are identified.

22 The Statement then goes on to refer
23 to digoxin and, in general terms. to refer to the
24 manner in which digoxin was stored and administered
25 in the Cardiac Wards prior to March 21, 1981.

It then sets out the medical case



B.6

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2 summaries to which I referred, medical case summaries
3 of the 28 children considered by the Toronto Police
4 to have died in suspicious circumstances; and in
5 the last three sections of the Statement the
6 following matters are referred to: the internal
7 meetings of doctors and nurses at the Hospital,
8 which were held from time to time, through the late
9 summer, fall and winter of 1980 to '81 to review
10 the number of apparently unexpected deaths that
11 were occurring on the wards, Wards 4A and B.

12 It then covers the events in the
13 period from March 12, 1981 to March 22, 1981,
14 including the deaths of Kevin Pacsai, Allana Miller,
15 Justin Cook and the discovery of apparently high
16 levels of digoxin in the blood and tissues of those
17 children and, it was thought, of Janice Estrella who
18 had died in January, 1981. It also covers within
19 that time frame the decision to treat digoxin as
20 a controlled drug in the Hospital, the calling in
21 of the Coroner and immediately thereafter the
22 Homicide Division of the Metropolitan Toronto Police.

23 Finally, Mr. Commissioner, the
24 Statement sets out very briefly the milestone dates
25 in the prosecution of Susan Nelles; her arrest on
March 25th, 1981 on a charge of First Degree Murder



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with respect to Justin Cook, the laying of three additional charges with respect to Janice Estrella, Kevin Pacsai and Allana Miller on March 27th, 1981, the commencement of the Preliminary Inquiry into those charges on January 4, 1982 and the discharge of Susan Nelles by Judge Vanek on May 21, 1982.

Now, that in very short compass, Mr. Chairman, is the contents of the Statement of Prima Facie Facts. It represents a substantial amount of work, primarily by Mrs. Cronk and the Commission's research staff and I hope, notwithstanding any objections that may properly be made to it, that it will achieve the purpose for which it was prepared.

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You will note, Mr. Commissioner,
I ^{as} inserted industry. I hope Miss Cronk will forgive
me but we do not lay claim either to perfection or
to omniscience. Perhaps the reason for that ~~display~~ ^{disclaimer},
Mr. Chairman, will become obvious when other counsel
level their proper objections to the contents of
this statement.

Mr. Commissioner, it is proper that
I say something also now about the so-called
Atlanta Report. There has understandably ^{and} ~~or~~ perhaps
unfortunately grown up an intense air of mystery
about that Report and this Commission in these
early stages may have added to the mystery by making
it plain that very careful thought has to be given
to just when and how that Report should be released
publicly.

That is unfortunate because it is no
part of my intention and I know certainly none of
yours, sir, to confer upon the Report any greater
mean^{ing} ~~ing~~ or significance than it in fact has.

When all is said and done (and it
will be clear when it is made public) the Report
is simply that. It is a report setting out certain
facts and inferences drawn from ^{Conclusions} ~~and of course~~
based upon those facts by the authors of the Report.



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2 That is not to deny or minimize the expertise of
3 those authors but I know that they would not claim
4 for themselves any monopoly on truth or insight or
5 infallibility.

C2 6 They are highly qualified,
7 conscientious epidemiologists who carried out an
8 epidemiology study of the apparent increase in
9 the incidence of deaths on Wards 4A and B in the
10 nine month period from July 1980 to March of 1981
11 and they of course believe that their opinions and
12 conclusions, to the extent that they reached and
13 expressed opinions and conclusions, they believe they
14 are valid and they are prepared to defend them and
15 they will come here to do so.

16 Mr. Commissioner, as physicians
17 and scientists they recognize that other equally
18 qualified and conscientious people may disagree with
19 some or all of their opinions or conclusions and
20 they will be cross-examined by Counsel for persons
21 and organizations who may disagree with them or who
22 may wish to test the validity of their opinions and
23 conclusions. That after all is the function and
24 purpose of cross-examination in our system and that
25 is the prime reason for the delay in releasing the
Atlanta Report.



1
2 It has been the paramount concern
3 of this Commission that if the Report states facts
4 or expresses opinions or conclusions which may reflect
5 adversely upon particular persons or institutions
6 those facts, opinions and conclusions should not
7 become public without affording to the affected
8 persons and institutions an immediate opportunity
9 to challenge and test them in cross-examination.

10 Nothing could be more unfair, in my
11 view, Mr. Commissioner, than to give public currency
12 to ~~the~~ facts, conclusions and opinions which may
13 be damaging to certain people and institutions and
14 to allow those facts, that information, to remain
15 unchallenged, untested, unexplained for days or
16 even perhaps weeks.

17 So it has been a basic decision that
18 the Report should not be released until its authors
19 are available for cross-examination.

20 The question therefore becomes:
21 "Why not have those people available for cross-
22 examination immediately and release the Report
23 immediately"?

24 In my submission, Mr. Commissioner,
25 there are two answers to that question. The first,
as I said a few minutes ago: I recognize that the



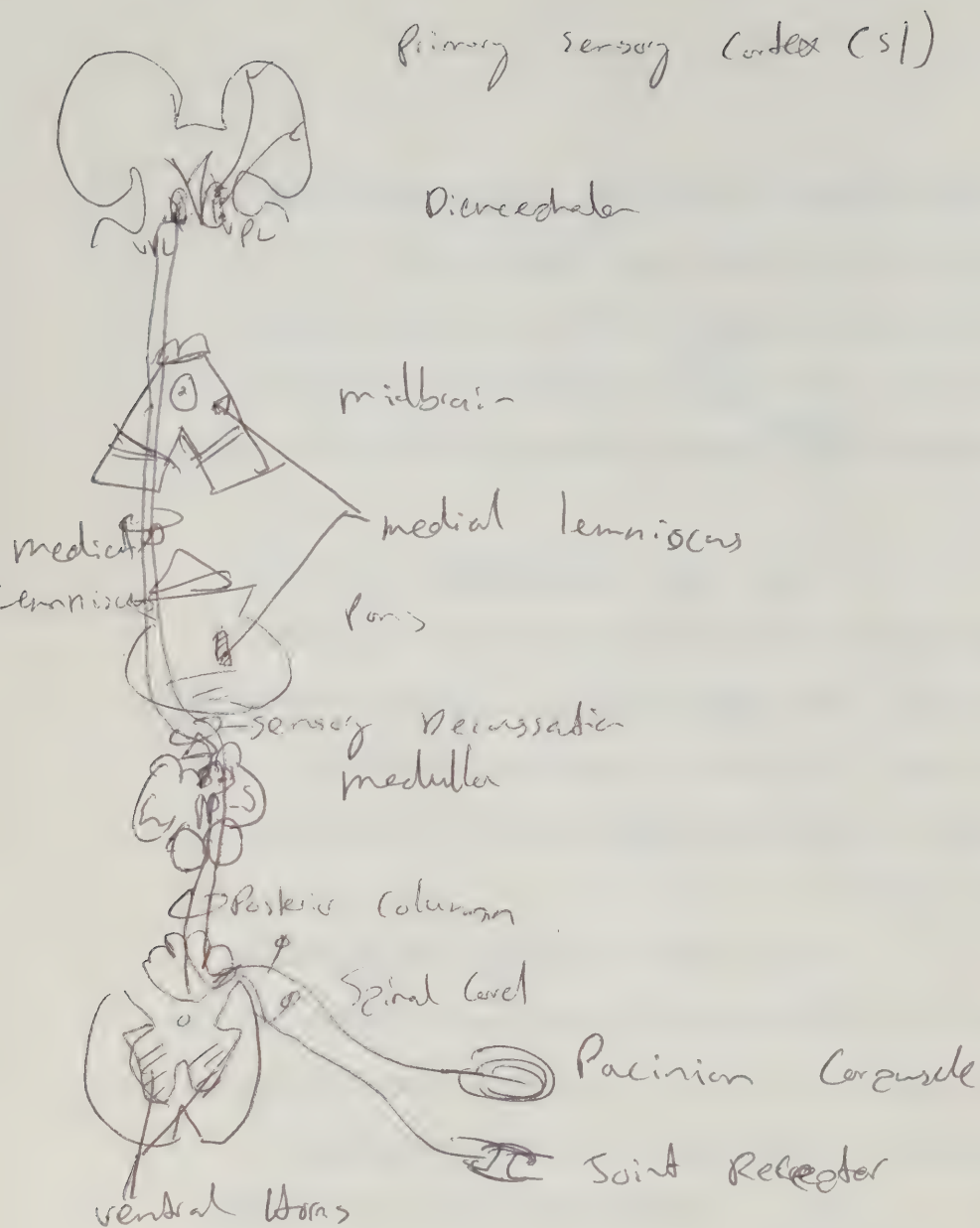
1
2 Report has already by mystery and speculation
3 been built into perhaps more than it is. It is
4 now, to hear some people talk, it is now almost
5 thought to be the key ^{the} solution to all of the painful
6 questions that ^{have} ~~are~~ being raised by this whole tragic
7 affair.

8 I say, Mr. Commissioner, I shall
9 be surprised if it proves to be that. I don't
10 believe that it is appropriate to give to the Report
11 star billing, to place it front and centre of this
12 Commission's enquiry by dealing with it as Item No.
13 1 on the Agenda.

14 In my view it is more appropriate
15 to place it in its proper sequential setting in the
16 evidence when in light of what will have proceeded
17 it it may more likely be seen in prospective.

18 Now, I acknowledge that in taking
19 that view I am ^{only} ~~fully~~ extending and I run the risk
20 of ~~only~~ intensifying the speculation and the mystery
21 and that is perhaps the cost of developing the
22 evidence in a rational and comprehensive way and of
23 trying to place ^{the} ~~report~~ in its proper evidentiary
24 and sequential prospective.

25 The choice between the options, Mr.
Commissioner, is essentially a judgment one. However



equations of static Equilibrium

$$\sum F_x = 0$$

$$\sum F_y = 0$$

$$\sum \tau = 0$$



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2 the choice is made, reasonable men and woman can
3 reasonably and persuasively disagree.

4 I said I lay no exclusive claim to good
5 judgment or wisdom but rightly or wrongly it is my
6 view that the Report should be released at the
7 appropriate point in the evidence.

8 The second answer to the question
9 why not start with the Atlanta Report, in my submission,
10 is this and it is related to that first one.

11 Whatever significance that Report
12 may have will, in my view, be most intelligently
13 discerned if a body of background evidence has already
14 been established. ^A The threshold question for this
15 Commission will be how many deaths are really in
16 issue here? How many children in Wards 4A and 4B
17 between July 1980 and March 1981 died deaths which
18 should reasonably be viewed as suspicious? Those,
19 I suggest, are threshold questions which will have
20 to be addressed early.

21 The Police Investigative Team, which
22 included distinguished Cardiologists, Pharmacologists,
23 Pathologists, concluded there were 28 such deaths.
24 Others, including the Atlanta Team and its consultants,
25 people at the hospital, have reviewed the medical
records of the children who died. Their conclusions



1
2 may and indeed they do differ from those of the
3 Police Investigative Team.

4 It is important in my view that
5 evidence as to the several medical conclusions be
6 led before we come to the Atlanta Report. To deal
7 at the outset with the Atlanta Report without having
8 first demonstrated the range of honestly held
9 expert medical opinion as to the number of suspicious
10 deaths would, in my view, be to run a serious risk
11 that the Atlanta Team's view of the appropriate
12 number of deaths (and whatever flows from that view)
might be too readily and uncritically accepted.

13 Let me make my position clear, Mr.
14 Chairman. I do not suggest that the Atlanta Report
15 can be utterly swept away by ~~team~~^{keen} cross-examination
16 any more than I suggest that it is the gospel that
17 will free us from all ~~the~~^{with} doubts ~~on~~^{on} questions. It
18 may be either or neither of those things. I hold
19 no brief either for or against the Report and its
authors.

20 My only brief and my obligation is
21 to bring before this Commission all the relevant
22 evidence in such a way as to make that evidence
23 comprehensible and as to enable the evidence to be
24 tested properly and adequately by cross-examination
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2 by prepared and informed counsel, ^{that}so/you, Mr.
3 Commissioner, and the public may form a well founded
4 view as to the significance, weight and reliability
5 of any and all of the evidence.

6 For all of these reasons then I
7 propose to take the following course with respect
8 to the release of the Atlanta Report.

9 I say first within the past few days
10 copies of the report had been furnished to counsel for
11 those persons or organizations who are likely to be
12 most adversely affected by the public release of
13 the report.
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2 Those counsel have received copies under the
3 obligation of the strictest confidentiality. They
4 are not even at this stage permitted to discuss
5 the report with their clients, or even to disclose
6 that they have it. And each counsel who received
7 the report gave an undertaking to the Commission
8 to abide by those strictures.

9 And it has been made plain to those
10 counsel that it is the Commission's intention to
11 make the report public in its entirety. The
12 purpose of this limited and strictly confidential
13 distribution of the report was to enable counsel
14 for those who will be most directly affected by
15 that release to consider it, and to make their
16 views known to the Commission as to the most
17 appropriate time and manner for the public release.

18 Mr. Commissioner, I expect to be
19 able to record a decision on those questions a
20 week today. Not all counsel who have so far
21 received the report have been able to respond.

22 Now in referring to the Atlanta
23 Report, as I have, and to the time and manner of
24 its release, Mr. Commissioner, I said something
25 about the orderly and comprehensible development of
the evidence.



1
2 I should now like to say something
3 more on that point and to set out the course that
4 I propose the evidence will follow.

5 As I said on May 31, and as I hope
6 is clear from what I said today, I propose to
7 adduce first evidence going to the inquiry which
8 you are directed to make under Paragraph 3 of the
9 Order in Council; that is to say, how and by what
10 means children came to their deaths on Wards 4A and B
11 in the period in question. I may be unduly
12 optimistic; I may be unduly pessimistic,
13 Mr. Commissioner: it is my present estimate that
14 that phase of the Inquiry will carry us into the
15 early fall of the year.

16 With respect to the evidence going
17 to the manner and means of the deaths of the
18 children it has been a very difficult task to fix
19 upon a sequence of evidence most conducive to a
20 rational and comprehensible development. And more
21 precisely, the problem has been where to start.

22 I decided, Mr. Commissioner, that we
23 should begin with some general background
24 educational evidence about the drug digoxin. Now
25 I have some misgivings about the selection of that
starting point because it suggests I have already



1
2 formed some tacit conclusion or opinion that
3 digoxin was involved in the so-called suspicious
4 deaths which will be reviewed here.

5 I want to assure you, Mr. Commissioner,
6 that that is not so. I have formed no such
7 conclusion. I am no more immune to suggestion
8 than anyone else, and like everyone else I have
9 been bombarded over the past two years with state-
10 ments and suggestions that we are dealing here
11 with cases of digoxin poisoning.

12 When all the evidence is before you
13 that may or may not be the conclusion at which you
14 arrive. But I to the best of my ability,
15 Mr. Commissioner, have attempted and will continue
16 to attempt to keep an open mind on that subject.
17 Certainly I perceive it to be my duty to bring
18 before you all relevant evidence, no matter whether
19 it supports or challenges the view that some or
20 all of the allegedly suspicious deaths were digoxin
21 related.

22 And therefore, sir, although I have
23 chosen to begin this evidence by calling witnesses
24 who will testify about digoxin, that should not be
25 taken as reflecting any assumption on my part that
digoxin overdose was the cause of any or all of



1
2 these deaths. That after all is what we are here
3 to find out; not prove.

4 What my decision does reflect is an
5 assumption that digoxin and the significance and
6 interpretation of digoxin assays apparently showing
7 its presence in certain concentrations in blood
8 and tissue, evidence as to that will figure
9 prominently in many of the hearings which are to
10 come. And it therefore seemed to me to make sense
11 that right at the outset we should know something
12 about the drug that will feature so prominently in
13 the evidence. Whether it featured prominently in
14 the deaths is a separate question. It will
15 certainly feature in the evidence.

16 I thought it appropriate that we
17 find out something about the drug in general terms
18 now in order that the later evidence may be more
19 intelligently heard and tested and assessed.

20 Indeed, Mr. Commissioner, in a
21 very real sense it would be artificial almost to
22 start with anything other than digoxin. As the
23 evidence unfolds it will be clear that at least
24 in the opinion of some experts there is a strong
25 probability that some of these children died as a
result of massive overdoses of digoxin and they



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2 will say that there is a strong suggestion that
3 digoxin was involved in the deaths of others.

4 Contrary views will be expressed.
5 The matter will centre to some degree around the
6 interpretation of digoxin test results. And of
7 course we are not working totally virgin soil here.
8 The ground has been previously tilled.

9 The four murder charges which were
10 laid against Susan Nelles alleged poisoning by
11 digoxin.

12 Judge Vanek in concluding that
13 the evidence was insufficient to justify committing
14 Miss Nelles for trial, expressly found, however,
15 and I am referring to page 24 of his reasons for
16 judgment, found:

17 "I am satisfied that there is
18 sufficient evidence to go to a jury
19 with respect to the four infants in
20 question, that in each case
21 (a) death was caused, directly or
22 indirectly, by digoxin toxicity;
23 (b) that the digoxin toxicity was
24 the consequence of a massive overdose
25 of digoxin given to the child; and
26 (c) that the digoxin was administered

"deliberately by a person meaning to cause death or bodily harm likely to cause death and who was reckless, whether death was caused or not."

There is one judicial finding; albeit on ^{hearing} one side of the case only, in the case of a preliminary inquiry. The evidence will of necessity concern digoxin. In my submission it is folly to pretend otherwise.

So regardless of whether at the end of the day digoxin may prove to have been an element in any or all of these deaths, inevitably it will be an important element in the evidence that you will hear, sir.

I therefore propose in the first few days of these hearings to lead evidence as to digoxin generally, its action as a therapeutic agent, its pattern of distribution in the body following administration, the ranges, to the extent that they can be identified, of therapeutic, toxic and lethal levels of the drug in the body, the analytical techniques that are used to establish its presence in blood and other tissues, the reliability and precision of those analytical techniques, and the interpretation of recorded



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2 concentrations of digoxin in blood and other tissues
3 with particular reference to the sites from which
4 the samples are taken for analysis, whether the
5 blood or tissues are pre-mortem or post-mortem
6 samples, and whether if they are post-mortem, they
7 are fresh or frozen samples, preserved in a fixing
8 solution or are exhumed samples. That is the kind
9 of question, Mr. Commissioner, which the evidence
10 will address in the first few days.

11 The evidence will not be specific
12 to any of the deaths which will be reviewed, or
13 indeed to any particular results recorded on any
14 particular sample taken from any particular child.
15 That will come later.

16 Initial evidence will be by way of
17 general background only. Evidence of particular
18 assay results from individual children will be
19 adduced at a later stage.

20 Now, Mr. Commissioner, ideally I
21 should have liked to call as the very first witness
22 the Commission's own consultant on clinical
23 pharmacology, Dr. Bernard Mirkin from the University
24 of Minneapolis Hospital, but with the very best
25 will in the world there are some things that
Dr. Mirkin could not rearrange so as to be here



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2 this week. He will be here on Tuesday of next week.

3 So I cannot begin with a clinical
4 pharmacologist although I hope we will hear from
5 two of them. Instead my first witness who, with
6 your leave, Mr. Commissioner, I would propose to
7 call at the opening of the hearing tomorrow morning,
8 will be Mr. George Cimbura now the Deputy Director
9 of the Ontario Centre for Forensic Sciences and he
10 will give evidence as to the analytical techniques
11 and procedures which are used to detect the presence
12 and to determine the concentration of digoxin in
13 blood and tissues. He will also give evidence as
14 to the accuracy of the results produced by assay
15 and the various procedures.

16 We then propose to call Dr. Graham
17 Ellis, a clinical biochemist at the Hospital for
18 Sick Children, and perhaps his colleague Dr. Steven
19 Soldin, to give further evidence about analytical
20 techniques for digoxin and the accuracy of the
21 test methods.

22 I then propose, Mr. Commissioner,
23 to lead the evidence of Dr. David Seccombe, of the
24 Shaughnessy Hospital, Vancouver, and the University
25 of British Columbia, who will testify about some
research work conducted by a group of which he is



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2 a member and whose work received mention in the
3 national press some weeks ago. That was a group
4 that took blood samples from infants who had never
5 received digoxin, ran those samples through one of
6 the standard analytical procedures for the detection
7 of digoxin, and obtained apparently positive
8 readings, recording one level, as reported to the
9 New England Journal of Medicine this year, in excess
10 of 4 nanograms per mililitre.

11 Now Dr. Seccombe will give evidence
12 as to those findings and as to what he believes to
13 be their significance. And he will also comment on
14 the analytical procedures that are now in use for
15 the detection of digoxin in blood.

16 And finally on the background phase
17 and not in the order that I would have chosen, I
18 propose to call Dr. Mirkin, the clinical pharmacologist
19 who is acting as a consultant to the Commission,
20 and perhaps Dr. Spielberg of the Hospital for Sick
21 Children, also a clinical pharmacologist, to give
22 evidence as to the action of the drug, its distribu-
23 tion pattern in the body, and the interpretation of
24 assay results.

25 Now Dr. Kauffman, another distinguished
clinical pharmacologist who assisted in the police



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investigation of these deaths and who has given

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evidence in the recent Gary. Murphy inquest, is

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entirely willing to come here as a witness but he

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unhappily cannot be available until the middle of

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July.

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2 I shall need to call him in any event
3 as a witness as to his role in the investigation by
4 the police of these deaths. I propose to call him
5 at an early stage so that he too may give evidence
6 about digoxin and the interpretation of assay results.

7 Mr. Commissioner, may I digress for
8 a moment from this outline of the sequence of evidence
9 to say this. It's obvious I suppose from what I've
10 said that some of the witnesses who will be called
11 to give non-specific background evidence will also
12 have evidence to give about particular analyses and
13 samples from particular children whose deaths are
under review; Mr. Cimbura and Dr. Ellis, for example.

14 It is equally obvious ^{that} I propose to split
15 their evidence, calling them initially on the general
16 background material and subsequently on the specific
17 matters about which they can testify. Each of
18 Mr. Cimbura and Dr. Ellis was involved in the
19 analysis of samples of blood and tissue from some
of the children whose deaths will be under review.

20 As I understand the procedure and
21 the proceedings of a Commission such as this, Sir,
22 I, in adducing the evidence, am not necessarily
23 subject to all of those structural restraints that
24 sometimes apply in trials. In a trial when one calls
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FF.2

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2 a witness, one is usually expected to lead from that
3 witness all the evidence that he has about all the
4 issues in the case. And certainly no matter how
5 restricted ~~to~~ one's examination in chief of the
6 witness may be, he may be cross-examined on anything
7 that he may know about any issue in the case. The
8 result in a trial, as you know, Mr. Commissioner, is
9 often this, that Witness A's evidence becomes a bit
10 of a patchwork quilt of different matters, some of
11 which won't become understandable at all until later
12 witnesses follow him into the box. I don't perceive
13 that I'm under that kind of constraint here, Sir,
14 and since a prime object in dealing with this mass
15 of very complicated, highly technical medical
16 evidence will be to make it as comprehensible as
17 possible, I propose, with your leave, to split the
18 evidence of witnesses, to call the same witness into
19 the box two or even three or more times.

20 By way of illustration, Dr. Mirkin
21 will, as I've said, give evidence next week about
22 digoxin generally. Later, he will return to give
23 evidence as to the review that he will have made
24 of the medical records of the babies who died and of
25 the digoxin assay results and to give his opinion as
an expert Clinical Pharmacologist as to the suspicious



FE.3

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2 or natural nature of each death on the basis of the
3 evidence available to him.

4 As I have said, Mr. Cimbura and
5 Dr. Ellis will play a double role, initially giving
6 general evidence, later coming to give evidence as
7 to the assay results which they themselves recorded.

8 Dr. Hastreiter will be called in the
9 first phase of the Inquiry with respect to the deaths
10 of the infants to give his expert opinion as a
11 Paediatric Cardiologist as to each of the deaths
12 under review. He reviewed the medical records, he
13 has formed a conclusion and he will be asked to come
14 here and state that conclusion and the reasons for it.

15 When we get to Phase 2 of the Inquiry,
16 the investigation into the police investigation and
17 prosecution, I propose to call Dr. Hastreiter again
18 to give evidence about those aspects of the police
19 investigation in which he participated.

20 It seems to me, sir, that in this way
21 the evidence may develop in a more readily under-
22 standable way. Where a witness is called to give
23 evidence in a restricted area but is to be recalled
24 later to give evidence in another area, I shall
25 advise you and other counsel, Sir, and I will indicate
the area or areas in which the witness is to testify



EE.4

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2 in his initial and subsequent appearances.

3 I will ask counsel in their cross-
4 examination the first time around to refrain from
5 cross-examining in areas into which the witness will
6 not go into until his second appearance. Now, of
7 course, on a witness' subsequent appearance, it may
8 be entirely fair and proper and sensible cross-
9 examination to take him back to what he said on his
10 first appearance.

11 Now, if, as the evidence develops,
12 Mr. Commissioner, any counsel feels unduly restricted
13 or prejudiced by the kind of restraint that I have
14 suggested, I ask please that the matter be raised
15 with me and I will try to resolve the problem with
16 that counsel, with him or with her, and failing that
17 we may ask you to rule on the matter, Sir.

18 Now, I go back to the proposed
19 sequence of ~~amendments~~ ^{evidence}. Following the general
20 evidence of digoxin, which should take us, in my
21 estimation, through to at least to the end of
22 Tuesday of next week, I intend next to lead evidence
23 to establish the number of deaths in the Cardiac
24 Wards in the period from July '80 to March '81, as
25 compared with prior and subsequent periods, and then,
of that number of deaths, to get into the medical



FF.5

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2 evidence as to the characterization, classification
3 of the review period deaths as being either
4 suspicious or not suspicious.

5 Now, I said a few minutes ago when
6 referring to the Atlanta Report, that the threshold
7 question in this Inquiry will be as to the number of
8 suspicious deaths that occurred in the review period.
9 To a very considerable extent, that is a matter of
10 medical opinion. I shall put before you, Sir, the
11 evidence of those medical experts who have reviewed
12 the medical information, the Hospital records and
so on.

13 Now, before that evidence is adduced,
14 I propose to enter as exhibits the hospital charts
15 of all of the children whose deaths have been or will
16 be reviewed. It's my expectation, Mr. Commissioner,
17 that you will see a range of expert opinion and a
18 measure of disagreement among the experts as to the
19 proper classification of particular deaths. We shall
20 in any event hear from Dr. Bennett, the Coroner who
21 reviewed many of these records, from cardiologists
22 at the Hospital for Sick Children, as well as from
23 Dr. Bain, formerly the Chief of Paediatrics and a
24 highly respected Paediatrician at the Hospital for
25 Sick Children, from Dr. Hastreiter, Paediatric





FF.6

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2 Cardiologist who reviewed the charts as a consultant
3 to the Police investigation team. We will I hope
4 hear from the Commission's own consultant in
5 Paediatric Cardiology and perhaps from others such
6 as Dr. Rowe, now Head of Cardiology at the Hospital
and other cardiologists on staff.

7 I will also be calling in that phase
8 of the evidence, Mr. Commissioner, clinical
9 pharmacologists including, as I have said, Dr. Mirkin,
10 the Commission's consultant, Dr. Ralph Kauffman, who
11 was a consultant for the Police investigative team
12 and ~~for~~ the Atlanta team, and also perhaps Dr.
13 Speilberg of the Hospital for Sick Children, who
14 again will have reviewed the digoxin results and
15 such part of the medical records as they, in their
16 judgment, feel they need to review ~~or~~ ^{and} will be prepared
to express an opinion.

17 Now, my purpose in calling so many
18 medical men is not to duplicate or triplicate or
19 quadruplicate evidence. Rather, it is to ensure
20 that the range of medical opinion is fully and fairly
21 presented and represented. That no doubt, Mr.
22 Commissioner, will be a substantial block of evidence,
and I think ~~would~~ ^{will} take us well towards the end of July.

23 It is when that area has been covered,
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EE.7

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2 when the range of medical opinion and view as to
3 the classification of deaths has been canvassed, ^{it} ~~is~~
4 then that I propose to call one of the authors of
5 the Atlanta Report to give evidence as to the
6 investigation and conclusions of that investigative
7 team. The Report will be entered as an exhibit and
8 cross-examination will doubtless ensue.

9 Mr. Commissioner, to this point I have
10 made no mention of the appearance as witnesses of
11 doctors, nurses, nursing assistants, ward clerks and
12 so on, the idea of calling them as witnesses as to
13 their involvement in and observations of anything
14 that occurred on Wards 4A and B.

15 To the extent that I propose to adduce
16 their evidence, it will likely follow the evidence
17 on the Atlanta Report. I say to the extent that I
18 propose to adduce their evidence because my present
19 inclination, Mr. Commissioner, is not to call ~~any~~ ^{many}
20 of the nurses, nursing assistants and so on. Their
21 evidence was taken at the Preliminary Inquiry in the
22 Nelles case. Many of them, and I certainly mean no
23 criticism of any, but many of them frankly had little
24 to say that was helpful in unravelling the mystery.
25 They will all be re-interviewed by the Commission's
staff to the extent they're available and if any of



EF.8

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2 them has anything relevant to say, we will certainly
3 hear the evidence. I do intend, however, to call
4 any doctor, registered nurse, registered nursing
5 assistant, ward clerk or anyone else who is known
6 to have been present on the wards at or shortly
7 preceding the time of a significant number of deaths,
8 I'm not prepared at this time to define what I mean
9 by a significant number, but I will certainly do so
later.

10 I also propose, Mr. Commissioner, to
11 call evidence of a statistical nature, to show any
12 patterns that may exist in the pre and post review
13 periods and in the review period itself as to the
14 times and places of the deaths of these children
and as to any other apparently relevant circumstances.

15 Now, that in broad strokes is the
16 sequence of evidence that I foresee in the first
17 phase of the Inquiry. I suggest that when I have
18 adduced all of the evidence that I consider relevant
19 on that phase, that counsel representing persons
20 with/standing then be invited to adduce such further
21 evidence on that phase as they consider relevant
and necessary.

22 Mr. Commissioner, in the time that's
23 been available, I have directed my attention primarily
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to the kind of evidence to be called on Phase 1 and I have not taken my thinking very far on the structure of the evidence on Phase 2. I can only say that at the present time my inclination is to treat the investigation of these deaths as having had its genesis in the meetings of nurses and doctors on the wards in the late summer and fall of 1980, going through the larger meeting involving cardiovascular surgeons as well in 1981, taking us through into March, the involvement of the Coroner, the involvement of the police and the continuing investigation of the deaths before, during and after the Preliminary Inquiry into the charges against Miss Nelles.

An essential question, it seems to me, in that phase of the Inquiry, will be a slight variation of the one formulated by Senator Baker in the Watergate Hearings: what did the investigative team know and when did they know it, With the further question, what use did they make of the information as it came to them? But in terms of anything of a closer structure of that evidence, Mr. Commissioner, I'm not able at this stage to say anything more.

Mr. Commissioner, you are embarking upon an Inquiry of enormous complexity. One cannot say where all this evidence may lead, and despite all



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2 the work that has been done to date by others and
3 despite all the publicity that's attended the events
4 which are the subject matter of the Commission, one
5 can have no preconceptions of where this trail of
6 evidence will end.

7 From what I know of the evidence that
8 we are likely to hear, I have to say that I approach
9 these matters in an attitude of puzzlement. I can
10 only say that I intend to bring before you, Sir, all
11 relevant and available evidence to assist you to
12 determine and to assist the people of this Province
13 to understand what happened at the Hospital for Sick
14 Children and what happened in the investigation of
15 those events and in the prosecution of Miss Nelles.

16 Mr. Commissioner, I apologize for
17 the length of this opening statement, but I thought
18 it appropriate ^{and} I hope it's been helpful, that I
19 outline where we have been and where, at this very
20 early stage of this Inquiry, I see ^{us going} ~~it's gone~~.

21 I have already, quite unnecessarily, ~~dis~~
22 claimed any monopoly on wisdom or even any claim to
23 wisdom. Certainly I shall welcome suggestions from
24 any quarter, either as to the ~~utility~~ utility of getting
25 into additional areas or as to the futility of going
into some of the areas that I have referred to.



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Now, Mr. Commissioner, I issue now a
standing invitation to all counsel to make such
observations to me, publicly or privately, either
today or at any time.



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Mr. Commissioner, may I tender as the next exhibit the Statement of Prima Facie Facts. Perhaps others may have objections or comments before it is so received.

THE COMMISSIONER: No. 3.

MR. MARSHALL: Mr. Commissioner, will you receive any submissions or comments in respect to this matter before it is received as the next exhibit?

THE COMMISSIONER: Well, certainly, I will receive, if you want, Mr. Marshall but you must understand that the whole idea is that it is tendered by Mr. Lamek or by Commission Counsel and you are not in any way bound by it. Do you wish to say something on that?

MR. MARSHALL: Yes, Mr. Commissioner, if I might. I will be very brief. I am referring to the stated weight that is perhaps to be given to this document as it appears at page 5 of the written statement which - and it seems implicit in that statement that it is considered by the Commissioner, you, sir, to reflect facts sufficiently proven unless one of us, counsel for the interested parties, should provide substantial and reasonable objection to you, sir, as to why these facts should



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not be accepted.

There are a large number of statements of fact in this document that would require a further review by myself. There are statements of fact that I am of the view are inaccurate and I appreciate Mr. Lamek's monumental endeavours but there have been time constraints and perhaps I am more familiar with some areas than Commission Counsel but it would seem to cast an obligation on me as counsel or other counsel that have a particular interest to safeguard - to discharge an onus before this Commission with respect to facts that have not been discussed in an open way before.

It would seem to me, with respect, that it would be more appropriate if this document were not at this point tendered as an exhibit and distributed for public comment, review and whatever conclusion any lay reader may derive from this; that it ought to be used simply as a guide at this moment and any particulars sought by any counsel to make submissions to Commission Counsel be exercised so that a minimum amount of inaccuracies will creep into a document of this magnitude, that it is going to, in a sense, form the context within which this Inquiry will proceed.



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I assume that --

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THE COMMISSIONER: May I just interrupt this for a moment. Certainly it is no part of any accepted facts at the moment and it is going to make it very difficulty, is it not, to make a ruling that we should not go into that matter if the document itself is not at least before all parties?

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MR. MARSHALL: Well, I am concerned. I understand, Mr. Commissioner, what you say. I am concerned however if any objection or exception I take to any of these statements fall to me to correct and that is what I read from page 5. It would seem to me that any objections that any counsel may have at this early stage in the proceedings ought to be dealt with before the Commission continues on with hearing any evidence.

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There are difficulties that I see. If I may just make one reference on page 9 of the document the Commission, as I read the paragraph, that part of Paragraph 6 on page 9 at the top, the Commission, perhaps quite properly, seems to be stating that it is limiting this Inquiry to the time period between July 1980 and March 1981; but there are many statements in this document which relate to other times much subsequent to that, unless



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2 I am misreading that.

3 THE COMMISSIONER: Somewhere in this
4 statement it says that where we give dates later
5 they are taken from Dubin Report and unless we state
6 to the contrary the facts then applied during the
7 relevant period.

8 MR. MARSHALL: I am sorry, Mr.
9 Commissioner, I am reading the sentence that reads:

10 "The time period relevant to this
11 Commission is July, 1980 to March
12 1981."

13 I am not referring to those statements
14 relating to the Dubin Inquiry or the relevance of
15 any of its findings to any earlier period of time.

16 Now, perhaps I have misread the
17 import of that statement but there is much in this
18 document that relates to activities that occurred
19 well beyond that time frame; but it would seem
20 material that any discrepancy or concerns about the
21 document and its contents should be cleared up at
22 an initial stage rather than later and that in the
23 interests of all of the participants and in the
24 interests of the public who will come to read this
25 document, if it is now tendered as an exhibit, and
will draw conclusions from its contents. That is the



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concern, Mr. Commissioner.

THE COMMISSIONER: Has anyone else any comments on that issue?

MR. SOPINKA: I have no comments but I do have some submission as to the weight that should be given to it. I think it is just a matter of terminology.

My submission very briefly is that I think I would not have any objection if it was phrased in this way with respect to any part of the statement any counsel takes objection, Commission Counsel be required to call evidence to establish that aspect of that. That is a position that is taken by counsel with respect to medical reports

THE COMMISSIONER: First of all it has got to be relevant. If it is a matter that really doesn't matter I am going to be pretty pliable if counsel does raise an issue with respect to something that is relevant.

MR. SOPINKA: I think even though you are quite famous for being pliable I think that what scares some people is that statement that there is an onus to satisfy you that there is evidence contrary.

I think it will be a little difficult to do that. I think it would be preferable to say



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that when there is an objection with respect to a statement that you consider to be relevant, that Commission Counsel has to establish that fact or has to call evidence that will adduce evidence with respect to this fact and in that way be put in the same position as medical reports and then I think there would not be the same objection.

THE COMMISSIONER: I think certainly I will lean that way, Mr. Sopinka, but I must have some flexibility because if I think it has either very little relevance or if I think it is adequately proved, I may just cheat a little on that and bring back that onus but generally speaking the onus will go the other way.

MR. SCOTT: I think I agree substantially with Mr. Sopinka in that if counsel takes objection to a relevant statement that the burden should be for the Commission Counsel to lead evidence on this.

The second matter, and I know you will have this very much in mind, is that while this statement is being more or less accepted you would want to caution the public and the press in particular from trying to draw any conclusions from it whatever.



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2 I have prepared a list of major
3 and minor inaccuracies in it that I will be
4 presenting to you in due course and I would just
5 like to leave the present as well as the future to
6 you sir, not to think because of its portentous
7 title "Statement of Prima Facie Facts" that those
8 facts necessarily represent reality. That is yet
9 to be decided and is simply put before you, as I
understand it as a general guide.

10 The third thing is I will be filing -
11 I had hoped to have it here ready - I will be filing
12 here very shortly a list of the objections I have,
13 paragraph by paragraph to the exhibit.

14 You will see that in due course.
15 There is no point now in going over it but I do want
16 to draw your attention to one major matter and that
17 is a substantial part of the statement is based on
18 summaries of medical histories of operations in the
hospital.

19 In some cases these summaries are
20 prepared by the authors or consultants to the
21 Atlanta Report and in some cases they are prepared
22 by Dr. Hastreiter and in some cases they appear to
23 have been prepared by unnamed persons. If the
24 effort was to reduce the medical records into English
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2 that effort has perceptively failed but that is of
3 no matter. If the purpose was to provide a full
4 and accurate account of the medical history, I am
5 advised that in very many cases the effort has
6 failed as well and I would ask Commission Counsel
7 to give serious consideration to withdrawing from
8 the Statement of Prima Facie Facts the summary of
the medical histories of these persons.

9 He has told you, sir, he is going to
10 put the records before you as an exhibit. That is
11 fine. Witnesses will be examined from the record.
12 That is appropriate. But it seems to me to put the
13 summaries in now does not advance the case for the
14 layman who will not understand it and does very major
15 damage to reality when these summaries are measured,
16 as they will ultimately have to be, against the
17 hospital records themselves and I would ask the
18 summaries be exorcised from the Statement of Prima
Facie Facts.

19 THE COMMISSIONER: Yes, Mr. Ortved.

20 MR. ORTVED: Yes, Mr. Commissioner.

21 My point is this: I support Mr. Marshall's position
22 and for this reason. Mr. Lamak in his opening comments
23 has made it clear. He said this with respect to
24 the Atlanta Report: that nothing could be worse than
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2 to leave damaging conclusions unchallenged.

3 I have a number of concerns about the
4 Statement of Facts which, like Mr. Scott; I do not
5 intend to go through ~~sercatum~~ with you at this time.

6 THE COMMISSIONER: By the way, before
7 we go on, supposing that this did become an exhibit.
8 Let us say No. 3, I think that's the right number -
9 and supposing Mr. Scott's objections and your
10 objections go in and you can write them out in any
11 form you like, as Exhibit 3A and 3B and we can hold
12 up, I suppose the publication of this document until
13 that is done, would you have any objection to that?

14 MR. ORTVED: Yes, I would for this
15 reason. One of the major portions of the document
16 relates to the Hospital Mortality Reviews, which
17 goes on for a number of paragraphs, some 16 in number.

18 THE COMMISSIONER: Which portion is
19 this?

20 MR. ORTVED: This unfortunately is
21 wrong in a tremendous number of respects.

22 THE COMMISSIONER: Where is that
23 again?

24 MR. ORTVED: That is at page 81,
25 Mr. Commissioner, through 88. My concern is that
if this goes in as an exhibit today, notwithstanding



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Mr. Scott's admonitions to the media, that this will then become a matter of publication and there are, unfortunately, in my submission, to you, erroneous perceptions will be ventilated as to the sequence of events concerning any particular Hospital Mortality Reviews - and I mean no disrespect to Commission Counsel. Unfortunately it just got mis-translated, if that's a proper word out of their respective sources and for that reason, in my respectful submission, what we should be doing is closeting, in clearing up these major factual errors which will not do any violence to the document in terms of later alterations, should they be necessary; and in my respectful submission, it will not matter a whit to the evidence we are going to hear for the next few days concerning Digoxin if in fact this document cleaned up over the next two or three days and then filed in a form that at least does not contain the very major factual errors.

THE COMMISSIONER: Thank you very much. Anyone else?

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MR. MANNING: I support

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Mr. Marshall's objection to the entering of this
statement of fact, prima facie statement of fact,
at this time.

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Perhaps after counsel for the parents
have been given an opportunity and a proper
opportunity to review the entire transcript of the
preliminary hearing (which I only received a copy
of in full last Friday) and then to be able to
compare the statement of fact set out in this
prima facie statement to the actual evidence as
reported in those --

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THE COMMISSIONER: Please. There
is a misconception somehow. The whole idea of
it is not that it is necessarily accurate,
totally accurate. It is something to start with
and it is something to prevent unnecessary evidence
being adduced and unnecessary cross-examination.

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There is no way we can control it
at all if we leave it until everybody is satisfied
with what the facts are. We will then be spending
days and days unnecessarily on matters that I am
asked in the terms of reference not to repeat.

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There may be some inaccuracies, and I
think Mr. Lamak conceded there may be. The

whole idea may be a mistake, but it is an attempt to obey the directions in the terms of reference. It is an attempt to shorten the proceedings.

MR. MANNING: I understand that, Mr. Commissioner, but I agree as well with Mr. Ortved when he says there may well be a misconception arising out of this document --

THE COMMISSIONER: Well, there will be no misconception with me. I can assure you of that. I will not be - as I say, I am prepared to withhold it for a short period, but I intend to act upon it. I intend to act upon it if I am to do my job properly. I intend to act upon it to control the evidence in some way.

Now I am quite prepared to accept the injunction of Mr. Sopinka that the onus perhaps should be the other way round. If you raise an objection at some time and you say you want to go into it, at least I will give you a chance to show that the statement of fact is wrong or is in error. But I don't want to have nothing. And that is really what Mr. Marshall and you are proposing, that I have nothing at all to go on. I can't say to anybody at any point, "Sorry, but this is something that we are not going to enquire into because



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2 it has already been established."

3 So all I ask is for something
4 constructive so that I can at least obey the terms
5 of reference that have been imposed upon me.

6 MR. MANNING: I couldn't agree with
7 you more, Mr. Commissioner, except that that does
8 not seem to be the way in which Mr. Lamek put this
9 before you.

10 If it is proposed to be an outline,
11 a guide post, to where we are going in this Inquiry,
12 then I of course have no objection. But if it is
13 meant to be, as is stated at page 5 and has already
14 been referred to in a letter from the Assistant
15 Commission Counsel, and as the title indicates,
16 as a prima facie statement of the facts, then in
17 my submission to you it is premature at this stage
18 for anyone to accept that as a statement of fact,
19 even as a prima facie matter, without having full
20 knowledge of the background materials that made up
21 the Dubin Inquiry and the transcript of the prelimin-
22 ary inquiry and the exhibits appended thereto.

23 THE COMMISSIONER: I don't intend
24 to go over the ground that the Dubin Inquiry has
25 already covered. I have no intention of doing that
at all unless you can show me two things: first of



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2 all, that it was wrong and secondly that it is
3 material to our Inquiry. And if you can show me
4 that... Now I may say that perhaps the onus should
5 be the other way round, but I have pretty well
6 committed myself to some flexibility, or at least
7 to some pliability on that issue. But I don't want
8 to end up with no document at all because then we
9 have nothing; no way of controlling this Inquiry
10 lasting well into the 21st Century. So that is
11 the purpose of it.

11 MR. MANNING: If that is the
12 purpose I can't argue with the purpose, but my
13 submission to you and the position on behalf of
14 my clients is at the present time I can't agree to
15 any of the facts because it is premature --

16 THE COMMISSIONER: You are not
17 asked to agree to one solitary fact. You are
18 bound by anything that is there.

19 All right. Anyone else?

20 Yes, Mr. Strathy?

21 MR. STRATHY: I just wanted to
22 indicate, Mr. Commissioner, that subject to what
23 you have said in response to Mr. Sopinka's submissions
24 with respect to onus, I am quite content to see
25 the statement go in at this time, subject to the



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2 obvious reservations.

3 I might mention that I have advised
4 Mr. Lamek by letter of two areas in particular where
5 I feel there is an onus on him to call evidence.
6 I won't deal with those at the moment. I think
7 they can be dealt with when the time comes.

8 THE COMMISSIONER: Yes. All right.
9 Miss Symes?

10 MISS SYMES: Yes, Mr. Commissioner.
11 We take very seriously the responsibility to review
12 the statement of prima facie facts. We believe
13 that certain conclusions drawn are either inaccurate
14 or untrue, and that the facts as stated may reflect
15 unfairly on certain of the parties.

16 We would ask or propose then that
17 Commission Counsel delay the marking of this as
18 an exhibit for a week; that all parties be given
19 an opportunity to make submissions to counsel with
20 respect to the inaccuracies that their clients
21 see in the report, and that all counsel have copies
22 of others' submissions, and that they be reviewed
23 then in one week's time.

24 I know on behalf of our clients we
25 have forwarded our comments with respect to the
statement and I suggest this be done openly



amongst all counsel.

THE COMMISSIONER: Yes. Anyone else?

Yes, Mr. Olah?

MR. OLAH: I am in the same boat. We have been retained fairly late in the proceedings and I would like to have the opportunity to review certainly the transcripts and to make any necessary amendments or --

THE COMMISSIONER: I don't want you to misconceive: you are not bound by it.

MR. OLAH: I understand the position you have taken. It is for that reason that I would ask that there be some delay before the report is formally released.

THE COMMISSIONER: Yes. All right. Anyone else then?

Now, Mr. Lamek, just to give you some indication of my thinking on this matter, I intend to act on this document only to the limited extent of perhaps occasionally saying to someone, "What is the objection to what is in this prima facie statement of fact?" Is there anything wrong, though, with delaying it for a week becoming public project?



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MR. LAMEK: Mr. Commissioner, I have not the slightest objection to that. I said in opening this thing, it may turn out to be the worst idea ever devised by the mind of man.

THE COMMISSIONER: It may well - it certainly isn't popular.

MR. LAMEK: I still don't think it is.

THE COMMISSIONER: I would like to take some of the blame for it. Mr. Lamek very bravely took it all on his own shoulders. It was my idea. And it may not have been a good one. But at any rate - he is right that Miss Cronk did all the work, but it was my idea.

MR. LAMEK: Having thus acquitted myself of all responsibility for the document.

THE COMMISSIONER: Well, what I would like to do is this, and I will certainly concede that the onus idea is wrong; that there is no onus on counsel if they find something wrong.

I think it can go in as another one of these secret documents, Mr. Registrar. For at least a week it will not be released to the press; that we will review the matter in a week's time and temporarily I see no reason why those who



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2 have objection to any of the facts can't submit
3 that in written form and it will become Exhibit
4 3A, B, C, D or E or whatever exhibit you want, so
5 that if it is released it will be released with
6 all those qualifications.

7 Now anything you want to say,
8 Mr. Lamek, on that?

9 MR. LAMEK: No, I am content with
10 that.

11 MR. SCOTT: Mr. Commissioner, I
12 would like to respond to that invitation.

13 THE COMMISSIONER: Yes.

14 MR. SCOTT: And file with you a
15 detailed list of objections to the statement of
16 prima facie fact.

17 THE COMMISSIONER: Yes. And can
18 we distribute that to everybody else?

19 MR. SCOTT: As far as I am concerned.

20 THE COMMISSIONER: All right. That
21 will be Exhibit 3A, and it will be equally secret
22 for a week's time.

23 MR. SCOTT: That is not necessary.

24 THE COMMISSIONER: Well, I am not
25 going to fight with everybody about that; particularly
as at least they saw our statement of fact. They



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haven't seen yours.

MR. SOPINKA: I think,
Mr. Commissioner, it is important that these changes
be distributed because I may be happier with your
facts than I am with Scott's.

THE COMMISSIONER: Well, they will
be distributed. I think I can safely say that.
Mr. Lamek, you can get the staff busy?

MR. LAMEK: I have no problem with
that, Mr. Commissioner.

THE COMMISSIONER: All right.

MISS GOODMAN: Mr. Commissioner?

THE COMMISSIONER: Yes.

MISS GOODMAN: If I might suggest
that after the changes are proposed and if there are
some changes that are agreed upon, that they then
become part of the statement, an amended statement
of fact.

THE COMMISSIONER: Eventually we
are going to be amending the statement of fact
throughout the whole piece, but the thing that was
worrying counsel was that the public will take the
statement of fact as gospel, even though we tell
them it isn't, so that if, when it does get public
notice which will not be for at least week, they



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2 will have at the same time the objections other
3 people have to them. Over the course of time we
4 will work it out. There is no point in amending
5 a statement of fact now with something controversial.
6 That will come out in the evidence and we will sort
7 it out.

8 All right. Anything else then on
9 that issue?

10 Yes, Miss Cronk?

11 MISS CRONK: Having found myself,
12 Mr. Commissioner, with perhaps the rare and undeserved
13 honour of being the author of this statement, in
14 response to a number of the comments that have been
15 made perhaps I can just clarify once again from
16 Commission Counsel's point of view the source from
17 which many of these facts were drawn.

18 For example, in the first and rather
19 large section of the statement which deals with back-
20 ground information concerning the organization of
21 the hospital, its medical staff, those facts were
22 drawn for the most part if not exclusively from the
23 Dubin Report. In other instances, as your Lordship
24 knows, direct reference was made to transcripts of
25 the evidence at the preliminary inquiry in the
Nelles matter.



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3 I think the point that may be of
4 assistance to all counsel at large in delivering
5 their comments and observations to Commission
6 Counsel with respect to the statement is that in
7 the time available to Commission Counsel it simply
8 was not possible to make a determination that the
9 statement of fact contained in those source documents
10 was of and in itself accurate or complete, and
11 they may well not be.

12 I say that because we look forward
13 to receiving your observations. Clearly we will
14 meet with you and look at them; see if there is a
15 better format in which those facts can be expressed.

16 But having received some of the
17 observations already from counsel who take objection
18 to certain of the facts in the statement, and having
19 reviewed those observations, I would add this
20 caveat: it may very well be that any particular
21 fact in the statement is not in the opinion of a
22 particular counsel or his or her client complete
23 or fully accurate.

24 However, if on the public record as
25 it now exists there is not an elaboration of that
fact, or further matters that are relevant to it
that can flesh out the fact, we are in a position



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where we must call evidence on that or have those additional facts adduced in evidence.

In other words, it isn't potentially sufficient to say we believe this particular fact to be inaccurate. If you could provide us with a reference to the record as you have now come to know it, the transcripts that you have reviewed, and the Dubin Report, it would be of assistance to us.

I say that only, as I say, because it appears that the authorship of the document has now been clearly expressed, and we look forward to receipt of observations from other counsel.

Thank you.

THE COMMISSIONER: Thank you, Miss Cronk.

It is now 25 past 3:00. I suspect there will be other comments on other matters besides the statement of fact. I think we will take - have anything before we take a break?

MR. LAMEK: No, I have nothing more.

THE COMMISSIONER: All right. Then I will take something like 15 minutes and we will come back at and go at it.

---Short recess.

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--- Upon resuming:

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MR. SCOTT: Mr. Commissioner, I know it's not a matter of your style, but I think you should arrange henceforth to enter the room with a little more ceremony and we will at least be forewarned that you're here. Perhaps Mr. Elliott can signal your arrival.

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THE COMMISSIONER: With some obscure signal. Were you thinking of semaphore or smoke or something like that?

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MR. SCOTT: I'll leave it to Mr. Lamek to devise a form.

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MR. LAMEK: I've tried, Mr. Scott, I've tried.

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THE COMMISSIONER: We'll work on it, we'll work on it.

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All right. Now, I think any further comments, Mr. Sopinka, on other matters.

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First of all with respect to the disclosure of the Atlanta Report. It is my submission that counsel who have received the report should now be at liberty to obtain instructions from their respective clients as to submission that should be



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2 made as to whether the Report should or should not
3 be released, or the timeliness of its release.

4 I find it very difficult to say
5 anything on that subject when I'm supposed to be
6 agent for my client without discussing it with my
7 client. I'm concerned that whatever the decision
8 is with respect to its disclosure I will not be
9 able to explain to my client what my role was in it
because I have not been able to obtain instructions.

10 We are in this position that I
11 consider that in this Inquiry, although we do not
12 have any real adversaries, the Attorney General is
13 involved, we're in a lawsuit with the Attorney
14 General, the Police are involved, we're in a lawsuit
15 with the Police. Of those three, we are the only
16 ones that don't have the Report in the sense that
17 my client cannot look at that report and instruct
18 me. The Attorney General has had it for some time,
the Police have had it for some time.

19 So, I say, with respect, I know it
20 has been done before, but I frankly can't understand
21 the concept of a lawyer being unable to tell his
client about any information that he has.

22 THE COMMISSIONER: That's not a
23 permanent seal of your lips you understand.
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MR. SOPINKA: No, I understand, but it is a very serious matter as to whether the Report should be released and when. I frankly cannot, I have no business making personal comments as to what I think the situation should be. Any comments that I make have to be on the instructions of my client.

THE COMMISSIONER: That's usual, that's the usual thing.

MR. SOPINKA: And I don't think you are interested in my private views.

That's all I have to say about that subject. The second point is, there are going to be a lot of expert witnesses. Many of them have testified in other proceedings. I would ask that before the witness testifies there be a statement of his evidence. If he's not given evidence before at all in connection with this matter, then it would be a summary of the totality of his evidence.

THE COMMISSIONER: Well, that's just for ease. You realize that almost all of these witnesses have testified before and sometimes two or three times.

MR. SOPINKA: Yes. Well, there may not be too many in that category, that is, in the category of those who have not testified at all. If



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they have testified and they intend to say something new or to depart from their previous testimony, notice should be given as to that.

This evidence will be very technical and it is impossible to cross-examine impromptu and it would result, I would think, in requests for adjournments because counsel will wish to be instructed with respect to the technical matters. So, I suggest, with respect, Commission Counsel should apprise interested parties of any departure from previous evidence of any expert in sufficient time so that we can get instructions.

THE COMMISSIONER: Do you want to make comment on that, Mr. Lamek, or do you want to wait until the end?

MR. LAMEK: No, I can respond to that, Mr. Commissioner. I am sympathetic with that request. My only difficulty is undertaking that it can in all cases be done in the case of new witnesses. I am thinking, for example, of the Commission's own consultants who, for a number of reasons, have only very recently been retained and will be called to give evidence after a very short time is available to them to review the necessary material. If it is humanly possible, I will ask that they prepare the



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2 kind of summary that Mr. Sopinka has in mind. I
3 recognize his problem and I recognize it may be
4 necessary lacking such a summary to recall them for
5 cross-examination at a later date.

6 Things can be so arranged that no one
7 is put at a disadvantage with that evidence.

8 THE COMMISSIONER: Can't do much
9 better than that, Mr. Sopinka. Perhaps a little but
10 not much better than that undertaking.

11 MR. SOPINKA: No, I'm content with that.
12 The only other points that I have, and perhaps I can
13 raise this with Commission Counsel, we've heard a lot
14 about the Atlanta Report, but I'm equally interested
15 in the Police Investigation Report, and I noted that
16 the Attorney General, in announcing your appointment,
17 said that the parents had been provided with a summary
18 with respect to what happened to their children, and
19 I'm asking that that be produced along with any other
20 Police Investigation Report that is in the hands of
21 Commission Counsel. I'm not asking you to make any
22 ruling on that, but this is a convenient time to
23 raise all matters that are troubling me and that's
24 one of them.

25 Finally, I understood from our last
discussion, that is, the last time the Commission



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convened, that you would make a formal ruling with respect to coverage of these proceedings by TV and electronic recording and I would ask that you make a ruling with respect to that.

THE COMMISSIONER: Supposing I make a ruling to make no ruling, how would that be? I'm going to see how it goes. I think that was what the ruling was before and that's what the ruling is now.

MR. SOPINKA: Fine, thank you.

THE COMMISSIONER: All right, Mr. Strathy. I'm going to go in what I think is in order so that everybody, I suppose, will have some rights of reply.

All right, Mr. Strathy.

MR. STRATHY: Thank you, Mr. Commissioner, just one point of information and, that is, that Mr. Claude Thompson has been retained as Counsel in this matter. Mr. Thompson can't be here today and may not be here for some days because he's tied up in Ottawa, but I thought I should advise the Commission of that.

THE COMMISSIONER: You have no further comments. What do you say about Atlanta?

MR. STRATHY: Well, I think, given what Mr. Lamak has already said with respect to



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Atlanta, I have no comments at this time on that subject.

THE COMMISSIONER: Yes, all right, thank you. Mr. Marshall?

MR. MARSHALL: I have no comment or remark to make at this time, Mr. Commissioner.

THE COMMISSIONER: Thank you. Mr. Scott?

MR. SCOTT: Two matters, Mr. Commissioner. It is our view that the Atlanta Report should be released immediately for the reason that Mr. Sopinka has given, that is, that under any other scheme one cannot obtain instructions from one's client.

THE COMMISSIONER: I didn't understand him to say it should be released immediately. I understood him to be released from his undertaking not to discuss it with his client. Did I get you right?

MR. SCOTT: Well, that's on the assumption that he has it and I know he wouldn't have told us that he has it because if he has it he's under an interdict not to tell anybody he has it.

THE COMMISSIONER: No, well, assuming -- okay.



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MR. SCOTT: Well then, if that is the case, I would go further and ask that the Report should be released forthwith. I do join Mr. Sopinka however in the ground for that, namely, it can't be discussed with anybody's client (a) if they haven't got it and (b) if they're under an interdict not to discuss it.

THE COMMISSIONER: Particularly dangerous with your clients because, not that they aren't responsible people, but there's an awful lot of them.

MR. SCOTT: That's true.

THE COMMISSIONER: So, that's one of the problems. If ^{we} you want to keep this document in circumstances that will not adversely affect the people who would be adversely affected if it were released, we cannot release it to too many people. That's the whole argument.

MR. SCOTT: Mr. Commissioner, I've made my views known to you in writing. This business of hiding the document by keeping it secret and discussing how it can't be revealed because it's going to damage something is really going to, in the end, give the document much more significance than, in my respectful submission, on its face it



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might entail. However, my views on that subject
are known.

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THE COMMISSIONER: Yes.

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MR. SCOTT: This is a Public Inquiry
and I think it should be released.

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The second thing is I adopt, and I
think I have them right, the other submission of
Mr. Sopinka about summaries. In the case where
witnesses, expert witnesses have previously given
testimony, the matter is not critical unless they
are going to be asked about questions that go beyond
their earlier testimony, by Dr. Mirkin, for example,
who is being called on Monday. In my respectful
submission it is absolutely critical that we should
have a summary of what he proposes to say for two
reasons: one, he is a significantly important
witness because he is a Consultant to the Commission
and, secondly, he is speaking on one of the
difficult questions before the Inquiry, that is,
the pharmacological properties of digoxin.

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He has not given evidence anywhere
else, of which I'm aware, and it will be impossible
to cross-examine him next week until we have a summary.
I can tell you, for example, that the pharmacologist
who assists me will be away next week, will not be

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able to hear that evidence and will not be able to give instructions.

So, I hope, at least in Dr. Mirkin's case, we can have by the end of the week a fairly detailed summary of what he proposes to say and the document or studies on which he proposes to rely in support of his conclusion.

THE COMMISSIONER: Do you want to say anything about that, Mr. Lamek, except that you will do your best?

MR. LAMEK: I could say that, Mr. Commissioner; it would be an idle promise. There is no way that I can have for Mr. Scott or for anyone else by Tuesday an outline or a summary of what Dr. Mirkin proposes to say.

If that means either the cross-examination of him should be delayed or that Dr. Mirkin's evidence itself should be delayed, then I'm in your hands. I suggest the former if it becomes an issue.

THE COMMISSIONER: Yes. Well, I think we'll just have to see what the situation is and certainly if your expert is not available next week, then you have no instructions or if you're not available next week we'll have to work it out. All right?



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Mr. Ortved?

MR. ORTVED: No, I have no comments
to make.

THE COMMISSIONER: Yes, all right.

Mr. Young?

MR. YOUNG: Mr. Commissioner, I am
David Young and I will be assisting Barry Percival
who represents the Metropolitan Toronto Police in
this hearing.

THE COMMISSIONER: Yes.

MR. YOUNG: Mr. Commissioner, my only
comment is, to explain, that Mr. Percival is presently
in front of Mr. Justice Rutherford in Windsor and
will be returning to these proceedings early next
week.

THE COMMISSIONER: Yes, all right,
and you will valiantly look after his interests in
the meantime.

MR. YOUNG: Yes.

THE COMMISSIONER: Yes, all right.

Ms. Symes?

MS. SYMES: I have no submissions at
this time.

THE COMMISSIONER: Yes?

MS. GOODMAN: Yes. I apologize, Mr.



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Commissioner, I didn't introduce myself. My name is Nancy Goodman.

THE COMMISSIONER: Yes, Ms. Goodman?

MS. GOODMAN: We don't have any submissions except to support Mr. Sopinka with respect to the documents being - I beg your pardon, with respect to the consideration that clients be advised of the report.

THE COMMISSIONER: Yes, all right.

Mr. Buhr?

MR. BUHR: No thank you, Mr. Commissioner.

THE COMMISSIONER: Mr. Olah?

MR. OLAH: Mr. Commissioner, the only thing I would like to point out is that Mr. MacDonald will be also appearing from time to time before you, sir, and I just wanted to point that out to you.

THE COMMISSIONER: Yes, all right.

Mr. Manning?

MR. MANNING: With respect to obtaining copies of documents for studies, I support the comments made by Mr. Scott. As well, I would like copies of the documentation referred to as exhibits to the Preliminary Inquiry. There's a lot of studies that were filed, to my understanding, at the Preliminary



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Inquiry which might be of assistance in coming to grips with some of the technical evidence. Those, to my knowledge, have not yet been introduced nor distributed to counsel.

THE COMMISSIONER: It's a clearly expensive business. Can you not say which ones you want?

MR. MANNING: All of them.

THE COMMISSIONER: Well, that certainly is a complete answer.

MR. MANNING: Especially in light of Mr. Hastreiter's comments at the Preliminary Hearing where he says there is very extensive literature on digoxin and he says, quote:

"I think it's important to know some of it in order to compare the effects of digoxin and so forth."

THE COMMISSIONER: Well, was some of that filed at the Preliminary Inquiry?

MR. MANNING: I believe it was but perhaps Mr. Lamek could comment on that.

MR. LAMEK: Mr. Commissioner, I'm not sure that it was. But I should tell Mr. Manning through you, sir, that we have only ourselves very recently come into possession of the exhibits. To



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the extent that they have not already been marked or introduced here as exhibits, and I'm thinking of medical records, and we are binding them and we will provide a copy to Mr. Manning just as soon as we can, and to everybody else for that matter.

MR. MANNING: Thank you.

Now, with respect to the Atlanta Report, not having seen the document, it's very difficult to comment on it. As I indicated to you last time we were together on May 31st, Sir, it's my opinion and my submission to you that it is grossly unfair to distribute this document to those who are in fact, as it was put, most concerned and not logically on the same condition -- in other words, if the document was going to be distributed, it should have been distributed to all counsel on the same condition.

THE COMMISSIONER: Well, you understand that it is going to be distributed prior and sufficiently before - that is our present intention - sufficiently before the cross-examination, at least before the first author is made available for cross-exmaination to enable you to do it. The problem with respect to those to whom it was distributed is that those persons might, in our opinion, be adversely affected.



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Now, there is no question that it would be better if we could distribute it to everybody but the more people we distribute it to we might just as well make it public. That's the problem. If it becomes public it adversely affects certain people before they have a chance to answer or to cross-examine. That would be, in my view, even more unfair.

Now, we have to make a, if you like, in the modern parlance, a judgment call on that. We made it. It may not be a good one and we may be obliged at some point to distribute it a little before we want to but I hope not. Again, if it does develop that you are in any way prejudiced in your pursuit of truth, at the critical time, then I will certainly entertain whatever motion you have.

MR. MANNING: There is a matter that recently came to my attention in the last couple of days and that was that there was an oral presentation on April 19th, 1983 at a conference entitled "The Epidemic Intelligence Service Conference", held under the U.S. Department of Health and Health Services, Public Health Services Center for Disease Control, at which time there was delivered a presentation with respect to, and I quote:

"Unexplained mortality on the
Pediatric Cardiology Ward, Toronto,
Canada."



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THE COMMISSIONER: Where did this
take place?

MR. MANNING: This took place in
Atlanta, Georgia, at a conference from April 18th
to the 22nd and this booklet is published and I
obtained this booklet in connection with an entirely
different and unrelated matter.

It lists the authors and in a very
brief synopsis what that talk was about. I don't
know whether other persons unrelated to this Inquiry
and in Atlanta, Georgia, have been privy to the so-
called Atlanta Report. I don't know whether this
Atlanta Report is being referred to but it certainly
sounds like it.

THE COMMISSIONER: It may very well
be that the authors in Atlanta - and we have no
control over them at all are just distributing it
all over the place. I have no idea. Do you know
anything about that, Mr. Lamek?

MR. LAMEK: Yes, I do, Mr. Commissioner.
I saw that recently as well. It is indeed the
same report that is being discussed but let it be
clear. As I ~~have~~ read the material that was released
in that conference it does not contain material from
the Report which has caused you, sir, and me concern



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about the public release.

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THE COMMISSIONER: Is that any help,
Mr. Manning?

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MR. MANNING: For the time being.

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THE COMMISSIONER: All right.

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Mr. Tobias?

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MR. TOBIAS: Mr. Commissioner, I
will be brief. My position with respect to the
release of the Atlanta Report is already on the
record. I just want to underscore one particular
point. Mr. Lamek in his opening statements made it
quite clear in emphasizing his primary concern is
that the report not become public --

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THE COMMISSIONER: I am sorry, not
become what?

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MR. TOBIAS: Not become public so
as to not prejudice any individual or institution.

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THE COMMISSIONER: Yes.

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MR. TOBIAS: Surely if the Commission
imposes the same stringent terms and conditions
with respect to all of the counsel that have
already been imposed upon counsel of those most
affected by the Report, that eliminates the danger
that it will become public.

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If counsel themselves for all parties

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2 are not entitled to discuss the Report with their
3 clients nor with any other members of their firm,
4 I think we all have enough commonsense not to go
5 public with it to the press.

6 My position is already on the
7 record as to how significant and important I feel
8 this is to have that document as early as possible
9 in order to prepare - not just for the evidence of
10 the authors of that Report will give when they are
11 called, but for all of the evidence that is to come
12 before them.

13 Those are my submissions.

14 THE COMMISSIONER: Yes, thank you.

15 Mr. Shanahan.

16 MR. SHANAHAN: Yes, Mr. Commissioner.

17 On behalf of the Lombardos, I think our position
18 with respect to the Atlanta Report is already on
19 the record and that is we wish it released and
20 released as soon as possible.

21 Mr. Commissioner, it seems that the
22 comment has been that those parties that are perceived
23 to be the most adversely affected have been given
24 this report and yet the irony of it seems to be that
25 those parties themselves seem to be here and trying
to get released from the strictures that have been



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2 placed upon how they may use and discuss that
3 report with their clients.

4 I do not think the criteria should
5 be those adversely affected. It should be broader.
6 We are affected, adversely or not --

7 THE COMMISSIONER: Yes.

8 MR. SHANAHAN: The Lombardos are very
9 keen on finding out what that report says vis-a-vis
10 their child so the sooner the better with respect
11 to that.

12 I might say too as well they perceive
13 that report and in fact the Preliminary Inquiry
14 documentation - I might say Mr. Manning, I think
15 for five families, Mr. Tobias for one family and myself
16 for one family are attempting to work off one copy
17 of the Preliminary Hearing transcripts. Again
18 (a) we are not getting the Atlanta Report and (b)
19 we are trying to scrounge among ourselves with
20 respect to the transcript of the Preliminary Inquiry.

21 I think it has come to our attention
22 that other parties have free access to the material.

23 THE COMMISSIONER: You realize it is
24 perhaps a matter of expense. What does it cost?
25 If you have that information - there are I guess some
40 volumes of that --



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2 MR. LAMEK: I don't know what the
3 cost is. It is a substantial undertaking and what-
4 ever the cost may be it is substantial to reproduce
5 it.

6 We were assured, I thought, that
7 three counsel for the parents could co-operate in
8 the use of a transcript. It was sitting waiting for
9 48 hours to be picked up from the time we told them
10 of its availability.

11 I really do not know what the
12 difficulty is. If it is a very serious problem
13 perhaps Mr. Shanahan can speak to me later.

14 MR. SHANAHAN: I will speak to you
15 later.

16 THE COMMISSIONER: There may be some
17 of it that you need and if there is I suppose we
18 can make additional ones. Every time we make one
19 there is some kind of a bookkeeping entry goes in
20 on the use of that machine and it is billed to this
21 Commission and the total goes up and up and up.

22 MR. SHANAHAN: I appreciate that,
23 Mr. Commissioner, but I think it is clear that other
24 parties have that access. The parents if they are
25 going to know and appreciate what is going on here
just have to have that. Just trying to get back and



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2 forth between offices trying to lug these documents
3 around --

4 THE COMMISSIONER: All right, we will
5 certainly consider your representations on that.

6 All right, Mr. Ortved. Did I skip
7 you?

8 MR. ORTVED: No. I thought perhaps
9 I should bring something to your attention having
10 regard to Mr. Manning's comments. I was aware of the
11 document to which he referred which is a seven page
12 abstract of a paper entitled "Unexplained Mortality
13 at the Cardiology Services of a Paediatric Hospital
14 in Toronto, Canada."

15 You should be aware, Mr. Commissioner,
16 and Mr. Lamek should also be aware that there has
17 since - apropos of your comment that you do not have
18 any control over the authors - being released for
19 publication in Aids to a Scientific Journal a
20 document entitled "Unexplained Deaths in the Children's
21 Hospital and Epidemiological Assessment" which now
22 runs to some 31 pages.

23 I do not know whether this contains
24 the material that is considered tantalizing by
25 counsel but it strikes me that if we delay much
longer we may be behind the actual authors in terms



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of the release of the Report.

THE COMMISSIONER: You are quite right. We will have to examine that document. Can we have a copy of it?

MR. ORTVED: Yes, Mr. Commissioner.

THE COMMISSIONER: Now, does anybody else have any comments? Have you anything further, Mr. Lamek?

MR. LAMEK: No, I have nothing more, Mr. Commissioner.

THE COMMISSIONER: Well, I think your first witness is tomorrow morning at 10 o'clock.

MR. LAMEK: Yes.

THE COMMISSIONER: I think we will rise until then.

---Whereupon the hearing adjourned at 1605 p.m. until Wednesday, the 22nd day of June, 1983.

